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July 11, 1969

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DEPARTMENT OF LAW LETTER OPINION NO. 69-17-L (R-86)

REQUESTED BY: THE HONORABLE DAN HALACY
State Senator and Chairman
Legislative Committee on Education

- QUESTIONS:
1. Does the State Board of Education have the authority to prescribe a course of study in sex education in the elementary schools?
 2. May the State Board of Education adopt guidelines relating to a course of study in sex education for the elementary school districts?
 3. May elementary school districts expand upon the State Board of Education's list of adopted textbooks and through the use of supplementary books and materials implement an additional subject or course of study?

- ANSWERS:
1. Yes.
 2. Yes.
 3. No.

Since a number of related questions regarding sex education have been submitted, the questions have been restated to cover the subject matter of the various inquiries in one opinion.

Sex education is a general term that may be broad or limited in scope. As a course of study, its scope, content and objectives are within the authority of the State Board of Education to establish, as indicated herein. This office is informed that the State Board of Education is presently undertaking a study in the area of sex education.

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In answering the above posed questions, the pertinent statutory provisions are recited below:

"§ 15-102. Powers and duties

"The state board of education shall:

* * *

"14. Exercise general supervision over and regulate the conduct of the public school system.

"15. Prescribe and enforce a course of study in the common schools.

"16. Prescribe the subjects to be taught in all common schools.

"17. Prescribe a list of optional subjects to be taught in all common schools. The list shall include manual training, household economics, kindergarten and such other subjects as the board determines.

"18. Prescribe textbooks for the common schools, and shall prepare a list of not less than three nor more than five textbooks for each grade and each subject taught in the common schools for the selection by the school district of one book from such list for each student. The books so selected shall be purchased by the school district direct from the publisher as provided in this title. Textbooks selected pursuant to the provisions of this title shall not be changed during the next five years."

"§ 15-442. General powers and duties

"A. The board of trustees shall:

* * *

"2. Enforce the courses of study and select all textbooks used in the schools from the multiple lists determined and authorized by the state board of education pursuant to paragraph 18 of § 15-102 and purchase the same from the publishers under contracts negotiated by the state board as provided in this title. The amount budgeted for this purpose shall not be included in the budget items to which the limitation provided by § 15-1203 shall apply. One fourth of the amount budgeted for textbooks may be expended for teaching aids relating to the textbooks selected. District school funds may be budgeted and expended by the board for supplementary books, as contained in the lists prepared by the state board of education pursuant to subsection B of § 15-1001, and for such additional textbooks as may be necessary because of an extraordinary increase in enrollment or an act of God, provided that supplementary books shall not be purchased in such quantities as to take the place of the textbooks prescribed by paragraph 18 of § 15-102."

"§ 15-1101. Furnishing of free textbooks

* * *

"B. The state board of education shall annually prepare lists of approved supplementary books from which the board of trustees of a school district may, with the approval of the state superintendent of public instruction, purchase supplementary books."

Question No. 1: Analyzing the above statutory provisions, the State Board of Education has the statutory authority to prescribe a course of study or subject in the area of sex education for all elementary schools. The State Board of Education may establish such a course of study or subject as mandatory, or the State Board may prescribe such a course as an optional subject for the elementary schools.

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Question No. 2: The State Board of Education may adopt guidelines relating to a prescribed course of study in sex education or an optional subject in sex education.

The establishment of guidelines by the State Board is necessarily implied from its express powers to prescribe and enforce courses of study or to prescribe an optional subject for the elementary schools.

These guidelines may relate to and limit the subject matter to be taught, material to be used and the grade level at which such course may be taught.

Question No. 3: A local elementary school district may enrich and expand upon the courses of study and curriculum prescribed by the State Board of Education and this may be accomplished through the use of supplementary materials and books. The supplementary materials and books used in the expansion of the adopted textbooks must relate to and come within the sphere of the prescribed course or curriculum.

It would appear reasonable that certain aspects of sex education are covered within the scope of prescribed courses or subjects in health or hygiene.

Except in the areas of manual training, household economics and kindergarten, elementary school districts may not implement an additional subject or course of study not prescribed by the State Board of Education, either as a course of study or as an optional subject (A.R.S. § 15-102.17, supra).

Respectfully submitted,

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by F. S.

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